August 29, 2002

Mr. Jim Lamoreux
Senior Counsel
SBC Communications, Inc.
1401 H St., N.W.
Suite 400
Washington, DC 20005

Dear Mr. Lamoreaux:

.This letter addresses SBC Communications Inc.'s ("SBC") July 15, 2002 request for interpretation concerning the separate affiliate requirements adopted in the *SBC/Ameritech Merger Order* and subsequently modified in the *Pronto Modification Order*.[1] We reiterate here the requirement in the *Pronto Modification Order* that SBC's incumbent local exchange carriers ("LECs") make additional space available in certain remote terminals using Next Generation Digital Loop Carrier ("NGDLC") architecture.

After a series of discussions with Bureau staff, SBC requested staff's interpretation of certain merger conditions arising out of the *Pronto Modification Order*. In the *Pronto Modification Order*, the Commission modified the separate affiliate conditions of the *SBC/Ameritech Merger Order* to permit SBC's incumbent local exchange carriers ("LECs") to own and operate certain equipment otherwise prohibited by the *SBC/Ameritech Merger Order*. The Commission modified its original determination in the *SBC/Ameritech Merger Order* based on certain additional conditions, including a requirement that SBC's incumbent LECs provide additional collocation space in their remote terminals.[2] In particular, the Commission required SBC's incumbent LECs to make available additional collocation space in all huts and CEVs deployed after September 15, 2000.[3]

SBC contends that the relevant condition in the *Pronto Modification Order*, *i.e.*, the requirement to provide additional collocation space in remote terminals, applies only to what SBC calls "Project Pronto terminals."[4] SBC presents five reasons for its interpretation. Specifically, SBC argues that:

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[1] Letter from Jim Lamoureux, Senior Counsel, SBC Communications, Inc. to Anthony Dale, Assistant Division Chief, Investigations & Hearings Division, Enforcement Bureau, FCC (July 15, 2002) ("*SBC July 15, 2002 Letter*").

[2] The requirement to make available additional collocation space applied to three types of remote terminals: (i) huts, which are above-ground structures; (ii) controlled environmental vaults ("CEVs"), which below-ground structures; and (iii) cabinets, which are small above-ground housings for all types of digital loop carrier systems. *See Pronto Modification Order* at paras. 33-37.

[3] *Id.* at para. 34(a).

[4] *See SBC July 15, 2002 Letter* at 1.

(1) the collocation space requirement must be read consistent with SBC's *ex parte* submissions in the proceeding that distinguish between "Project Pronto" and "non-Project Pronto" remote terminals;[5]

(2) the plain language of the voluntary commitments that states that SBC must make available additional collocation space in remote terminals "using a NGDLC architecture that supports both POTS and xDSL services" limits SBC's obligation only to those remote terminals with the equipment needed to provide both POTS and xDSL services;[6]

(3) the Commission would have clearly revised the "terms of voluntary commitments offered by SBC" in *Pronto Modification Order* had it meant to do so;[7]

(4) a reading of the space requirement that would impose the additional space condition on more than just the "Project Pronto" terminals would violate the "overall spirit" and purpose of the *Pronto Modification Order*;[8] and

(5) some NGDLC is not, as a matter of fact, capable of "support[ing] both POTS and xDSL services."[9]

Based on these arguments, SBC believes that it must only make additional collocation space available in a subset of huts and CEVs, *i.e.*, those it refers to as "Pronto huts and CEVs." This position is incorrect.

The plain language of the order and its conditions states that SBC must make available additional collocation space in all "huts and CEVs using a NGDLC architecture that supports both POTS and xDSL services" and are deployed after September 15, 2000.[10] We agree with SBC that we should read the language of paragraph 34 of the order with this language from Appendix A. But SBC's construction of Appendix A is overly restrictive. SBC effectively construes "supports" to mean architecture that *SBC uses to provide* both POTs and xDSL services.[11] This construction is inconsistent with the plain language and the specific equipment examples in the *Pronto Modification Order*. The term "NGDLC architecture that supports both POTs and xDSL services" refers to NGDLC architecture that is compatible with or suitable for a combined POTS-xDSL offering, and it is not limited to NGDLC architecture that SBC currently and actually uses for a combined POTs-xDSL offering, as SBC urges. In fact, the *Pronto Modification Order* recognized that additional equipment (*e.g.*, plug-in cards) may be necessary for a specific NGDLC unit to realize its full potential.[12] The fact that a hut using NGLDC may

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[5] *See id.* at 1-3.

[6] *Id.* at 2-3, 5.

[7] *Id.* at 4.

[8] *Id.*

[9] *Id.* at 5.

[10] *Pronto Modification Order* at Appendix A, para. 5(b)(1); para. 34.

[11] *See* SBC's second argument *supra*.

[12] *See Pronto Modification Order* at n.34.

need plug-in cards and other equipment does not change its fundamental nature; it is still a hut using "a NGDLC architecture that supports both POTS and xDSL services." Because the language of Appendix A is fully consistent with paragraph 34, SBC's argument that the Commission failed to indicate an express departure in the order from SBC's offering is misplaced.[13] There was no such departure. Finally, the terms "Project Pronto remote terminals" and "non-Project Pronto remote terminals" appear nowhere in the *Pronto Modification Order*, and, in any event, SBC has failed to establish that there is any ascertainable distinction between those two terms or even to offer any viable definition of them. They simply cannot serve as a basis for assessing SBC's compliance.[14] The plain language of the conditions and order requires SBC to make additional collocation space available in huts and CEVs containing *all NGDLC* deployed after September 15, 2000.[15]

SBC's arguments about the spirit of the agreement[16] and the language of its *ex parte* submissions to the Commission[17] do not alter our view of the controlling nature of the plain language of the order and its conditions. We not persuaded that SBC's *ex parte* descriptions of its commitments and the "history" of the proceeding may govern our analysis. The plain language of the conditions and the Commission's adopting order, not SBC's statements proffered during the proceeding, control SBC's obligations. Moreover, to the extent that the "overall spirit" of the order is relevant to interpreting its plain language, we find no inconsistency. The overall spirit of the order was to "enable competing carriers to provide advanced services in SBC's territory" while relaxing the *SBC/Ameritech Merger Order*'s equipment ownership requirement.[18] Applying the collocation requirement to all NGDLC architecture capable of supporting both POTs and xDSL services serves the Commission's goal by affording SBC's competitors the opportunity to provide advanced services out of SBC remote terminals. By contrast, SBC's interpretation would limit that opportunity.

SBC must make additional collocation space available in huts and CEVs containing *all NGDLC* deployed after September 15, 2000. With respect to the effect of this interpretation on the forthcoming audit reports, the independent auditor should apply this interpretation, but may disclose SBC's interpretation in the same paragraph.

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[13] *See* SBC's third argument *supra.*

[14] In fact, SBC has indicated that its "non-Project Pronto remote terminals" will be using the same equipment deployed in its "Project Pronto remote terminals" and addressed in the *Pronto Modification Order, i.e.*, the Alcatel Litespan and AFC UMC-1000 products. *See Pronto Modification Order* at n.37.

[15] To the extent SBC argues that some NGDLC architecture is simply incapable of supporting both POTs and xDSL, *see* SBC's fifth argument *supra*, it has made no showing to support such a contention or to allow us to limit the category of NGDLC architecture that is subject to the collocation requirement.

[16] *See* SBC's fourth argument *supra.*

[17] *See* SBC's first argument *supra.*

[18] *See Pronto Modification Order* at para. 1.

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Please feel free to contact me if you have any additional questions. You may also contact Mr. Mark Stone of my staff at (202) 418-0816.

Sincerely,

Maureen F. Del Duca
Deputy Chief
Investigations and Hearings Division
Enforcement Bureau

CC: Ernst & Young, LLP